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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,568	03/29/2001	Dillis V. Allen	G-38	4968

7590 06/01/2005

DILLIS V ALLEN ESQ  
105 S ROSELLE ROAD  
SUITE 101  
SCHAUMBURG, IL 60193

EXAMINER
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PASSANITI, SEBASTIANO

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Notice of Abandonment

Application No.

09/820,568

Examiner

Sebastiano Passaniti

Applicant(s)

ALLEN ET AL.

Art Unit

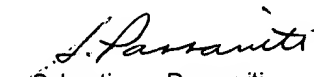
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 04 February 2004.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

See Continuation Sheet

  
Sebastiano Passaniti  
Primary Examiner  
Art Unit: 3711

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

## Item 7 - Other reasons for holding abandonment:

Applicant's attention is directed to MPEP §711.03 ( c ), reproduced below for the convenience of the applicant. A detailed Office action was mailed 02/04/2004 setting a one-month period for response, with extension of time grantable pursuant to 37 CFR §1.136(a). The 02/04/2004 Office action was mailed after a review of an amendment received from the applicant on 11/24/2003. No further communication has been received from the applicant.

On Wednesday, May 18, 2005, a call was placed to the Office of Dillis V. Allen, Esq. A representative for the applicant indicated that the 02/04/2004 Office action was never received. A courtesy copy of the 02/04/2004 Office action is attached for the convenience of the applicant.

This application is ABANDONED.

## I. PETITION TO WITHDRAW HOLDING OF ABANDONMENT

A petition to revive an abandoned application (discussed below) should not be confused with a petition from an examiner's holding of abandonment. Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application. \*\* Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based on unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

## A. Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action&lt;

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and reissue the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. \*\* The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions). Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

  
Sebastiano Passaniti  
Primary Examiner

### DETAILED ACTION

This Office action is responsive to communication received 11/24/2003 (c.m. 11/17/2003) – Request for three month extension of time, Change of address and Amendment A.

The reply filed on 11/24/2003 is not fully responsive (see 37 CFR 1.111) to the prior Office Action because of the following omission(s) or matter(s):

The amendment received 11/24/2003 does not comply with 37 CFR §1.73. Specifically, all of the claims being amended are new to the patent. Therefore, there should be no deleted text in the claims and the entire text of the new claims should be underlined. Applicant should explain the changes made as per 37 CFR §1.173. Further, applicant need only submit the claims being amended or added by the response, not a listing of all the claims. Note, 37 CFR §1.121 does not apply in this case. See MPEP Section 1453, page 1400-58 (Original Eighth Edition, August 2001, Latest Revision February 2003) and the section styled, "*Amendment of New Claims*".

In addition and before the application can be allowed, the amendment to the claims will necessitate a supplemental declaration pursuant to 37 CFR §1.175(b)(1) covering the changes made. A supplemental oath/declaration need not be submitted with each amendment and additional correction. Rather, it is suggested that the reissue applicant wait until the case is in condition for allowance, and then submit a cumulative supplemental reissue oath/declaration. See MPEP Section 1444.

As a further note and reminder to the applicant, the original patent will also have to be surrendered if the application is allowed.

COURTESY COPY OF ACTION MAILED 02/04/2004

COURTESY COPY OF ACTION MAILED 02/04/2004

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Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sebastiano Passaniti whose telephone number is 703-308-1006. The examiner can normally be reached on Mon-Fri (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sebastiano Passaniti  
Primary Examiner  
Art Unit 3711

S.Passaniti/sp  
February 2, 2004

COURTESY COPY OF ACTION MAILED 02/04/2004

COURTESY COPY OF ACTION MAILED 02/04/2004